

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3869

July 8, 2004

R E S O L U T I O N

Resolution E-3869. San Diego Gas and Electric Company (SDG&E) submits an Advice Letter (AL) to increase electric transmission rates effective October 1, 2003, pursuant to the Federal Energy Regulatory Commission's (FERC) May 2, 2003 order in Docket ER03-601-000.

SDG&E's request is approved with modifications and requires that SDG&E return revenues collected in excess of AB1X levels through a one-time credit to Schedule EECC.

By Advice Letter 1526-E Filed on September 26, 2003.

SUMMARY

SDG&E's request to increase electric transmission rates is approved to the extent that it is in compliance with the specifications of Assembly Bill (AB) 1X as articulated in D.04-02-057. For the period October 1, 2003 through April 10, 2004, SDG&E is required to return to residential customers the excess amounts it collected in violation of the specifications of AB 1X.

Through AL 1526-E filed on September 26, 2003, SDG&E requested to implement an increase in transmission rates that FERC had authorized to be made effective on October 1, 2003 subject to refund. By letter dated October 24, 2003 the Director of the Energy Division informed SDG&E that the rates filed in AL 1526-E are not effective. In the letter Energy Division acknowledged that FERC authorized SDG&E to increase its transmission revenue requirement and stated its support for SDG&E's ability to recover its FERC authorized costs. Energy Division informed SDG&E that pursuant to Public Utilities Code Section 454, the Commission must approve the transmission rates that are set to recover the revenue requirement before those rates become effective. The letter notified SDG&E that the Commission may require refunds of revenues collected from SDG&E's customers.

A major issue to be determined was whether AB 1X prohibits the utility from implementing rate increases that would raise a residential customer's total rate for usage up to 130% of baseline. On February 26, 2004, D.04-02-057 in R.01-05-047 determined that AB 1X does prohibit such rate increases.

Pending approval of this advice letter, SDG&E continued the implementation of higher rates contained in AL 1526-E from October 1, 2003 to April 10, 2004. On April 11, 2004, SDG&E adjusted residential rates for usage up to 130% of baseline to a lower level to comply with D.04-02-057. We find that SDG&E must return the excess amounts it collected in violation of AB 1X pending approval of this advice letter through a one-month reduction to commodity rates for residential usage up to 130% of baseline. Based on information provided by SDG&E to Energy Division, the revenues to be returned pursuant to this resolution total approximately \$4 million. Returning this revenue will bring rates from October 1, 2003 through April 10, 2004 into compliance with D.04-02-057 and AB 1X.

We approve AL 1526-E with the following modifications:

- We allow SDG&E to implement transmission rate increases to the extent that the transmission rate increases do not increase total rates for residential usage up to 130% of baseline.
- We approve SDG&E's 12-month coincident peak methodology because it is consistent with rate design methodology used in FERC proceedings.
- We order SDG&E to return excess revenues that SDG&E collected pending approval of this advice letter in the form of a one-time credit toward the electric energy commodity cost (Schedule EECC) for residential usage up to 130% of baseline. Such revenues are in violation of AB 1X and the Energy Division had expressly notified SDG&E that the Commission had not allowed AL 1526-E to become effective on October 1, 2003.

BACKGROUND

FERC approved SDG&E's request to increase its transmission revenue requirement effective October 1, 2003 subject to refund.

SDG&E states in AL 1526-E that on March 3, 2003 it filed with the FERC in Docket ER03-601-000 a request to increase its transmission revenue requirement

by \$32.3 million¹. SDG&E presented to the FERC a revised methodology for calculating retail and wholesale customer transmission rates. SDG&E states that on June 28, 2003, the FERC issued an order in Docket ER03-601-000 approving SDG&E's request effective October 1, 2003, subject to refund.

SDG&E Filed AL 1526-E to Increase Electric Transmission Rates Effective October 1, 2003.

By AL 1526-E SDG&E revised its electric transmission rates effective October 1, 2003, citing the FERC May 2, 2003 order in Docket ER03-601-000. This increase in transmission rates resulted in an increase in total rates, including total rates for residential usage below 130% of baseline.

Energy Division Informed SDG&E that its Proposed Transmission Rates Are Not Effective.

By letter dated October 24, 2003 the Director of the Energy Division informed SDG&E that the rates filed in AL 1526-E are not effective. In the letter Energy Division acknowledged that FERC had authorized SDG&E to increase its transmission revenue requirement and stated its support for SDG&E's ability to recover its FERC authorized costs. Energy Division informed SDG&E that pursuant to Public Utilities Code Section 454, the Commission must approve the transmission rates that are set to recover that revenue requirement before those rates become effective. The letter notified SDG&E that the Commission may require refunds of revenues collected from SDG&E's customers.

The Applicability of AB 1X to Rate Increases Resulting from AL 1526-E was the Subject of a Pending Commission Proceeding.

¹FERC's notice of filing in Docket ER03-601-000 dated March 12, 2003 states that SDG&E tendered for filing a revised Transmission Owner tariff on March 7, 2003. In its protest to the filing dated March 28, 2003, the CPUC argued that SDG&E's proposed changes would increase the transmission revenue requirement by \$45.5 million.

Energy Division issued its letter to SDG&E after the Office of Ratepayer Advocates (ORA) protested AL 1526-E on the basis that SDG&E's proposed transmission rates would increase total rates for residential usage up to 130% of baseline and would not conform to AB 1X. The issue of whether it is legally permissible for SDG&E to increase its total rates for residential usage up to 130% of baseline was within the scope of R.01-05-047. Energy Division awaited the determination of this issue in R.01-05-047 as an appropriate forum to seek guidance regarding ORA's protest of AB 1X issues. Energy Division did not issue an order to address AL 1526-E until after it was determined in D.04-02-057 in R.01-05-047 that AB 1X prohibits rate increases to total retail rates for usage up to 130% of baseline.

Pursuant to D.04-02-057, SDG&E submitted a compliance Advice Letter adjusting residential rates under 130% of baseline to comply with AB 1X.

In compliance with D.04-02-057, SDG&E filed AL 1580-E on March 29, 2004 to adjust total residential rates for usage up to 130% of baseline to February 1, 2001 levels. The adjusted residential rates became effective on April 11, 2004. Ordering Paragraph (OP) 19 of D.04-02-057 required each electric utility that takes power from the Department of Water Resources to file and serve a compliance advice letter to demonstrate that its total residential rates for usage up to 130% of baseline quantities are no higher than they were on the date that AB 1X became effective.

Prior to issuance of D.04-02-057, the Commission had made effective several uncontested advice letters SDG&E filed which resulted in an increase in total rates for residential usage below 130% of baseline. D.04-02-057 determined that AB 1X prohibits rate increases to total retail rates for usage up to 130% of baseline and found SDG&E's total rates for residential usage up to 130% of baseline not to be in compliance with AB 1X. OP 19 of D.04-02-057 corrected those uncontested rate increases and brought rates into compliance with AB 1X prospectively (beginning April 11, 2004).

NOTICE

Notice of AL 1526-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Advice Letter 1526-E was protested.

SDG&E's Advice Letter 1526-E was timely protested by the Office of Ratepayer Advocates (ORA) and Duke Energy North America (DENA). SDG&E responded to the protests of ORA and DENA on October 17, 2003 and October 24, 2003, respectively.

The following is a more detailed summary of the major issues raised in the protests.

ORA protests on AB 1X and revenue allocation issues.

ORA objects to SDG&E's electric transmission rates to the extent that the proposed rates lead to increases to residential customers for usage up to 130% of baseline. ORA argues that such increases to residential customers do not conform to AB 1X, California Water Code Section 80110, and Commission precedent. In D.02-12-02 the Commission decided that customer usage of up to 130% of baseline could be allotted a bond charge as long as the addition of the bond charge would not result in a net rate increase for usage up to 130% of baseline. ORA suggests that SDG&E may increase the residential transmission rate component for usage up to 130% of baseline insofar as there is an offsetting reduction to another component of residential rates.

ORA also raises concern that, within the context of a transmission revenue increase, SDG&E's proposed tariff sheets show increases to most customers except large industrial and TOU agricultural customers with some rate schedules receiving rate decreases and negative transmission rate components.

In its response, SDG&E argues that the transmission rate design adopted is based upon a 12-month coincident peak (12-CP) rate design methodology that is approved by and commonly utilized in FERC rate proceedings. SDG&E states that its decision to use a 12-CP methodology is consistent with FERC Administrative Law Judge Young's Initial Decision in *Pacific Gas and Electric Company*, 97 FERC ¶ 63,012 at 65,058 (1999). SDG&E states that on August 28, 2003, the FERC summarily affirmed the Initial Decision on this issue involving the use of 12-CP as the appropriate rate design methodology.

In its response, SDG&E also argues that AB1X does not preclude increases in non-commodity rates for residential usage up to 130% of baseline. SDG&E asserts that the Commission has authorized non-commodity rate increases for usage up to 130% of baseline resulting in a net rate increase for such usage. However, D.04-02-057 concluded that AB 1X provides protection for total charges for residential usage up to 130% of baseline. OP 19 of D.04-02-057 ordered utilities subject to Water Code Section 80110 to revise their rates if necessary to demonstrate that total residential rates for usage up to 130% of baseline quantities are no higher than they were when AB 1X became effective. In response to Ordering Paragraph 19 of D.04-02-057, SDG&E submitted AL 1580-E which adjusted total residential rates for usage up to 130% of baseline to February 1, 2001 levels.

Duke Energy North America (DENA) protests large rate increases.

DENA raises the concern that SDG&E provided little-to-no background information contained within its advice letter to substantiate or clarify the 35 cents/kW-month increase to the transmission component of its standby rate. The increase in the Schedule S transmission rate will impact DENA financially.

SDG&E responds that the use of the 12-month coincident peak methodology increased Schedule S standby rates. The FERC summarily affirmed the Initial Decision on this issue involving the 12-month coincident peak methodology on August 28, 2003. SDG&E states that Schedule S standby rates under rates that FERC had previously approved, effective April 1, 1998, would have generated \$306,926 in annual transmission revenues based upon a CPUC rate design methodology that involved splitting rates between rate components, including transmission. SDG&E states that the use of a 12-month coincident peak methodology approved in FERC Docket ER03-601-001 increases Schedule S's revenue requirement by 390% of previous revenues to \$1,497,000. However, SDG&E implemented price stability by limiting the increase in the standby revenues to \$614,0000 with the difference allocated to other customer classes during the first rate effective period of October 1, 2003 to June 30, 2004.

DISCUSSION

Energy Division has reviewed AL 1526-E, ORA's protest, and DENA's protest. Discussion of the relevant facts that lead to the approval and modifications of this advice letter is below.

SDG&E's electric transmission revenue allocation methodology is approved.

Energy Division acknowledges that FERC authorized SDG&E to increase its transmission revenue requirement subject to refund effective on October 1, 2003. The 12-month coincident peak revenue allocation methodology adopted is consistent with a rate design methodology used in FERC proceedings. On August 28, 2003, the FERC affirmed the Initial Decision on this issue involving the use of 12-CP as the appropriate rate design methodology. Energy Division supports SDG&E's recovery of its FERC-authorized costs. Protests by DENA and ORA regarding the issue of SDG&E's transmission rate allocation methodology are denied.

D.04-02-057 rejected SDG&E's argument that AB 1X's rate protection for usage up to 130% of baseline applies only to the commodity component of its residential rates.

D.04-02-057 determined that Water Code Section 80110, added by AB 1X, provides protection to residential customers so that total retail rates for residential usage up to 130% of baseline cannot exceed February 1, 2001 levels. The decision further ordered that SDG&E prospectively adjust its total residential rates to comply with that statute. AL 1526-E implemented transmission rates which lead to rate increases to customers using up to 130% of baseline usage in violation of AB 1X.

Since February 1, 2001, SDG&E has implemented several increases in non-commodity rate components for usage up to 130% of baseline in violation of AB 1X, including the implementation of the electric transmission rates proposed in Advice Letter 1526-E. D.04-02-057 determined that because SDG&E's total rates for residential usage up to 130% of baseline exceeded the total rates for such usage when AB 1X became effective, SDG&E's total rates for residential usage under 130% of baseline did not comply with AB 1X. In compliance with D.04-02-057, SDG&E reduced commodity rates contained in Schedule EECC, Electric Energy Commodity Cost, so that total residential rates for up to 130% of baseline

are equal to February 1, 2001 levels, effective April 11, 2004. The commodity shortfall resulting from the AB 1X adjustment is recorded in AB 1X Shortfall Account, a subaccount of the Energy Resource Recovery Account (ERRA) for future recovery.

SDG&E's transmission rate increases from October 1, 2003 through April 10, 2004 resulted in increases to residential customers using up to 130% of baseline and do not comply with AB 1X.

SDG&E's implementation of this advice letter did result in increasing residential customers' rates for usage up to 130% of baseline from October 1, 2003 to April 10, 2004 and was in violation of AB 1X. Through AL 1580-E, SDG&E adjusted the rate downwards prospectively on April 11, 2004.

SDG&E must return the revenues for the period October 1, 2003 though April 10, 2004 to the extent they increased total rates for residential usage up to 130% of baseline because ORA had timely protested the rate increases and the Energy Division informed SDG&E that the rates filed in AL 1526-E are not effective on October 1, 2003.

ORA's protest that SDG&E's implementation of Advice Letter 1526-E's proposed transmission rates do not conform to AB 1X is granted. D.04-02-057 concluded that increasing certain rate components without offsetting decreases in other rate components for residential usage up to 130% of baseline is counter to AB 1X. D.04-02-057 found that SDG&E's implementation of uncontested increases in non-commodity rate components that increased total rates for residential usage up to 130% of baseline do not comply with AB 1X and ordered SDG&E to adjust its rates prospectively to comply with the statute.

In D. 04-02-057, the Commission decided against refunds on grounds that there were no protests and because the Commission had allowed the proposed rates to become effective. In contrast, this advice letter was protested and SDG&E was informed by Energy Division that the proposed rates were not effective on October 1, 2003.

The fact that D.04-02-057 found sanctions or refunds inappropriate for the amounts by which SDG&E's total rates for residential usage up to 130% of baseline had exceeded rates in effect when AB 1X was enacted is not applicable here. D.04-02-057 found refund inappropriate in the context of a situation when

“no party protested the rate increases and the Commission allowed them to become effective².” We find that the circumstances of AL 1526-E are unique: ORA timely protested the rate increases on AB 1X issues and Energy Division informed SDG&E that the rates proposed in AL 1526-E are not effective. SDG&E was informed that the transmission rates proposed in AL 1526-E would not become effective until an order was issued to address AL 1526-E. Under these circumstances, we find that it is appropriate that SDG&E return to customers the amount by which SDG&E’s transmission rates increased total rates for residential usage up to 130% of baseline.

Based on information provided by SDG&E to Energy Division, the revenues collected by SDG&E through the implementation of AL 1526-E in violation of AB 1X total approximately \$4 million for the period between October 1, 2003 and April 10, 2004.

SDG&E shall file an advice letter to implement the one-time credit toward Schedule EECC.

SDG&E shall file an advice letter within 45 days of the effective date of this Resolution to propose a plan to return revenues required by this Resolution. The plan shall demonstrate that SDG&E will return the revenues it collected as a result of its implementation of AL 1526-E from October 1, 2003 and April 10, 2004 that increased residential rates for usage up to 130% of baseline. SDG&E will return the revenues in the form of a one-time credit toward the electric energy commodity cost (Schedule EECC) consistent with the handling of the prospective AB 1X rate reduction required by D.04-02-057. The credit shall commence no later than 90 days after today’s date. The advice letter shall be effective on the date that the credit to Schedule EECC commences subject to Energy Division determining that it is in compliance with this Order. The shortfall resulting from this adjustment will be recorded in the AB 1X Shortfall Account portion of the ERRA.

² D.04-02-057, page 106.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and was placed on the Commission's agenda no earlier than 30 days from the day it was mailed. Comments were filed by SDG&E on June 22, 2004. No reply comments were filed.

SDG&E comments that it is inappropriate for the Resolution to require SDG&E to refund the increase in transmission rates it implemented in violation of AB 1X.

In its comments, SDG&E states that D.04-02-057 determined that the adjustment to SDG&E's rates for compliance with AB 1X is to be made only on a prospective basis. SDG&E argues that the Commission should not create an additional \$4 million undercollection by allowing AL 1526-E to be treated differently than 14 other rate filings that have been made since AB 1X became effective on February 1, 2001. SDG&E states that the Commission determined in D.04-02-057 that it was not necessary to determine whether refunds would constitute retroactive ratemaking because it had decided that the adjustment to rates for AB 1X would be made on a prospective basis.

SDG&E's argument that D. 04-02-057 prohibits refund of excess revenues collected through the implementation of AL 1526-E has no merit because of different circumstances at issue here.

D.04-02-057 found refunds inappropriate to the extent that no party protested the rate increases and the Commission had allowed them to become effective. In contrast, in this case, ORA timely protested the rate increases on AB 1X issues and the Energy Division had informed SDG&E explicitly in a letter dated October 24, 2003 that its rates filed in AL 1526-E are not effective. Thus, the circumstances of AL 1526-E are unique and allow AL 1526-E to be treated

differently than other rate increases SDG&E implemented that were determined in D.04-02-057 to be a violation of AB 1X.

Energy Division informed SDG&E that pursuant to Public Utilities Code Section 454, the Commission must approve the transmission rates that are set to recover that revenue requirement before those rates become effective. Energy Division awaited the determination of this issue in R.01-05-047 as an appropriate forum to seek guidance regarding ORA's protest of AB 1X issues. Energy Division did not issue an order to address AL 1526-E until after it was determined in D.04-02-057 that AB 1X prohibits rate increases to total retail rates for usage up to 130% of baseline. Therefore returning the increased electric rates charged for residential usage up to 130% of baseline by AL 1526-E for the period between October 1, 2003 and April 10, 2004 in the form of a one-month reduction to the commodity rate is appropriate.

We have reviewed the comments and rejected SDG&E's assertion that refunds are not appropriate.

SDG&E's proposal to return the revenue collected in excess of AB 1X levels through reducing Schedule EECC is adopted.

SDG&E proposes that if the Commission determines that SDG&E must return excess revenues collected from October 1, 2003 to April 10, 2004, they should be returned by reducing the Schedule EECC rates. We adopt SDG&E's proposal.

FINDINGS

1. SCE states that on March 3, 2003, SDG&E filed with the FERC in Docket ER03-601-000 a request to increase its transmission revenue requirement.
2. AL 1526-E revises SDG&E's electric transmission rates pursuant to the FERC's May 2, 2003 order in Docket ER03-601-000.
3. ORA filed a timely protest.
4. DENA filed a timely protest.
5. Energy Division informed SDG&E on October 24, 2003 that the rates filed in AL 1526-E are not effective.
6. SDG&E filed AL 1580-E on March 29, 2004 to adjust total residential rates for usage up to 130% of baseline to February 1, 2001 levels to comply with D.04-02-057.

7. D.04-02-057 rejected the notion of refunds for amounts for which SDG&E's total rates for residential usage up to 130% of baseline usage exceeded total rates in effect on February 1, 2001 because no party protested the rate increases and the Commission allowed them to become effective.
8. Returning the increased electric rates charged for residential usage up to 130% of baseline by AL 1526-E for the period between October 1, 2003 and April 10, 2004 in the form of a one-time credit toward the electric energy commodity cost (Schedule EECC) is appropriate because a party protested the rate increases and Energy Division informed SDG&E on October 24, 2003 that the rates filed in AL 1526-E are not effective.
9. ORA's protest regarding AL 1526-E's violation of the provisions of AB 1X is granted.
10. ORA's and DENA's protests regarding allocation of transmission rate increases are denied.

THEREFORE IT IS ORDERED THAT:

1. SDG&E's electric transmission rates detailed in Advice Letter 1526-E are approved with modifications effective today.
2. SDG&E will issue a one-time credit toward the electric energy commodity cost (Schedule EECC) to return the increased electric rates charged for residential usage up to 130% of baseline resulting from implementing AL 1526-E for the period between October 1, 2003 and April 10, 2004. SDG&E shall issue the one-time credit to Schedule EECC no later than 90 days from today's date.
3. SDG&E shall record the shortfall resulting from the AB 1X adjustment required by this Order in the AB 1X Shortfall Account of the ERRA for future recovery.
4. SDG&E shall file an advice letter within 45 days of the effective date of this Resolution to propose a plan demonstrating that revenues collected in violation of AB 1X for the period between October 1, 2003 and April 10, 2004 resulting from implementing AL 1526-E are returned to residential customers. The advice letter shall be effective on the date on which SDG&E issues a credit toward Schedule EECC rates as required by this Order subject to Energy Division determining that the advice letter is in compliance with this Resolution. The effective date shall be no later than 90 days from today's date.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 8, 2004; the following Commissioners voting favorably thereon:

WESLEY M. FRANKLIN
Deputy Executive Director

MICHAEL R. PEEVEY
President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

I will file a concurrence.
/s/ LORETTA M. LYNCH
Commissioner